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*J.Y.R.*

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/388,294 09/01/99 EVANS

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EXAMINER

STRIMONS, K

ART UNIT

PAPER NUMBER

3763 *#7*

DATE MAILED:

12/01/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

## Office Action Summary

Application No. 09/388,294	Applicant Michael Evans
Examiner Kevin C. Sirmons	Group Art Unit 3763



Responsive to communication(s) filed on Sep 18, 2000

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle* 1035 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

### Disposition of Claim

Claim(s) 33-38 and 42-45 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 33-38 and 42-45 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claims \_\_\_\_\_ are subject to restriction or election requirement.

### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

### Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. Claims 33-38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As to claim 33, it is unclear if the means advancable from the catheter for creating a second access penetration is the guide tube or the penetrating element or both.

As to claim 43, it is unclear as to what is meant by the guide tube has a pre-formed tip which deflects laterally. It appears that the penetrating element has the pre-formed tip. Please explain?

Note: The examiner will examine the claims as best understood.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

3. Claims 33, 34, 36, and 38 are rejected under 35 U.S.C. 102(e) as being anticipated by Quick et al. U.S. Pat. No. 5,857,999.

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Quick discloses a device for positioning a filament in a body lumen comprising: a catheter (10) which can be introduced through a first access penetration into the body lumen; and means advancable from the catheter (12, 70) for creating a second access penetration and providing a filament path (12, 70) between said first and second access penetrations; wherein the catheter has at least one lumen therethrough (10) and the advancable means is reciprocatable received in the catheter lumen (10); wherein the advancable means comprises a guide tube having a lumen therethrough (12) and a penetrating element removably received in the lumen and extending from the distal tip of the guide tube (70, 98), wherein the penetrating means can be withdrawn from the guide tube after the guide tube has been placed between the access penetrations to leave the guide tube lumen as the filament path (figs. 1-3; further comprising an expandable anchor disposed over at least a portion of the catheter (64)).

4. Claims 33-37 are rejected under 35 U.S.C. 102(b) as being anticipated by Tafeen. U.S. Pat. No. 3,539,034.

Tafeen discloses a device for positioning a filament in a body lumen comprising: a catheter (20) which can be introduced through a first access penetration into the body lumen; and means advancable from the catheter (12, 14, 16, 18) for creating a second access penetration and providing a filament path (12, 14, 16) between said first and second access penetrations; wherein the advancable means has a pre-formed tip which deflects laterally as it is advanced from the catheter (12, 14, 16, 26); wherein the advancable means comprises a guide tube (16) having a lumen therethrough and a penetrating element removably received in the lumen (12, 14, 18),

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wherein the penetrating element can be withdrawn from the guide tube after the guide tube has been placed between the access penetration to leave the guide tube lumen as the filament path (12, 14); wherein the penetrating element is a stylet (12, 14, 18).

5. Claims 42- 45 are rejected under 35 U.S.C. 102(b) as being anticipated by Williams et al. U.S. Pat. No. 5,246,014.

Williams discloses a device for positioning a filament in a body lumen, said device comprising: a catheter which can be introduced through a first access penetration into the body lumen, said catheter having a proximal end, distal end and a lumen therethrough (50); a guide tube reciprocatably disposed in the lumen of the catheter so that the guide tube can be advanced from the distal end of the catheter (40), said guide tube having a proximal end, a distal end, and a lumen therethrough (40), wherein the distal end of the guide tube is deflectable (col. 16, lines 1 and 2); and a penetrating element reciprocatably mounted in the lumen of the guide tube so that the penetrating element can be advanced from the distal end of the guide tube to penetrate a luminal wall in a direction determined by deflection of the distal end of the guide tube (10); wherein the guide tube has a pre-formed tip which deflects laterally as the guide tube is advanced from the catheter (40 and 10); wherein the penetrating element is a stylet (10); further comprising an expandable anchor disposed over at least a portion of the catheter (10).

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***Response to Arguments***

6. Applicant's arguments with respect to claims 33-38 and 42-45 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Kevin C. Sirmons whose telephone number is (703)306-5410.

The examiner can normally be reached on Monday - Thursday from 6:30 am to 4:00 pm. The examiner can also be reached on alternate Fridays.

*KC5*

Kevin C. Sirmons

Patent Examiner

11/28/00



RICHARD K. SEIDEL  
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